STATE OF MICHIGAN
IN THE SUPREME COURT

DONNA KROON-HARRIS,

Plaintiff-Appellee,

v

STATE OF MICHIGAN,

Defendant-Appellant.

Court of Appeals No. 261146

Court of Claims No. 04-78-MK

Opn 7/14/05
Rec 9/21/05

OG

J. Draganchuk

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APK

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APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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II. **The Michigan Constitution recognizes the plenary authority of the Commission to set compensation rates and establish procedures for settling classified civil service employment disputes. Here, the Court of Appeals held that an LTD benefit is a contract and granted the Court of Claims jurisdiction to resolve a dispute over classified civil service compensation benefits. Does the Court of Appeals' holding impermissibly interfere with the constitutional authority granted to the Michigan Civil Service Commission and thus violate the Separation of Powers Doctrine under Const 1963, art 3, § 2?**

III. **The Revised Judicature Act, MCL 600.631, provides that appeals from agencies authorized to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, must be brought in the Circuit Court. The Office of State Employer is created by Executive Order of the Governor and is authorized to formulate policies. Is the Office of State Employer an agency authorized under the laws of this State to promulgate rules, in which case Plaintiff's claim should have been brought in the Circuit Court under the Revised Judicature Act?**

IV. **Appeals from a decision of the Michigan Civil Service Commission must be brought in the Circuit Court. Here, the Office of State Employer's final decision was implemented under the plenary authority of Commission and dealt with a subject matter within the exclusive jurisdiction of the Commission. Did OSE's decision constitute a decision by the Commission such that Plaintiff's claim should have been brought in the Circuit Court and not the Court of Claims?**

STATEMENT OF ORDER APPEALED FROM, GROUNDS, AND RELIEF SOUGHT

Defendant-Appellant State of Michigan ("Michigan") appeals from the July 14, 2005 published opinion of the Court of Appeals holding that the Court of Claims had jurisdiction to resolve a dispute over eligibility to long term disability benefits granted to Plaintiff Donna Kroon-Harris ("Ms. Kroon-Harris"), a state classified employee, by the Michigan Civil Service Commission. The Court of Appeals held that because a contract existed between Ms. Kroon-Harris and Michigan for long term disability benefits, the claim was properly brought in the Court of Claims.

The Michigan Civil Service Commission ("Commission") is a constitutional body that has plenary authority over all conditions of employment in the classified civil service. The Commission's exclusive authority to regulate employment-related activity of State employees in the classified service includes interim matters such as compensation in the form of long-term disability benefits.

This case involves the significant question of whether a benefit offered as part of the compensation package to classified State employees by the Commission constitutes a "contract." The answer to this question is crucial in determining whether the Court of Claims has exclusive jurisdiction over a challenge to review a final decision of the State Employer terminating long-term disability ("LTD") benefits to a classified State employee.

The Court of Appeals failed to consider this Court's analysis in *Studier v Michigan Public School Employees' Retirement System.*[1] This Court held that a statute does not create a contract

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[1] *Studier v Michigan Pub Sch Employees' Retirement Sys*, 472 Mich 642; 698 NW2d 350 (2005). Michigan specifically brought this Court's decision in *Studier* to the attention of the Court of Appeals in its August 3, 2005 Motion for Reconsideration. The Court of Appeals, in an Order dated September 2, 2005, denied the Motion for Reconsideration stating only that "the motion for reconsideration is denied."

unless it contains clear language manifesting an intent to create a contractual obligation.[2] In so holding, this Court rejected the Court of Appeals' earlier analysis in that case—that the plaintiffs' health insurance, for which plaintiffs paid a portion of the premium, constituted consideration because it was part of an employee's benefit package tendered by the State in exchange for services rendered by the employee.

Similarly, the LTD plan in which Ms. Kroon-Harris chose to participate is not a contract. The LTD plan was part of an overall compensation package offered to all classified civil service employees by the Commission. When the Constitution gave the Commission plenary authority to establish the compensation for classified civil service employees, it did not state that the Commission would be "contracting" with classified civil service employees for their "rates of compensation" or for the terms and conditions of their employment.[3] When the Commission chose LTD benefits as part of the compensation package, it did not state that a contract would be created. Neither did the LTD plan contain any clear language indicating an intent by Michigan to create a contractual obligation.

The outcome of this case is far more significant than its effect on Ms. Kroon-Harris or other classified employees who may be appealing a final decision of the State Employer regarding the denial or termination of LTD benefits. The Court of Appeals' holding that the classified civil service LTD plan is a contract of insurance would, if allowed to stand, open the door to claims that any classified civil service benefit for which the employee makes a monetary contribution, can be regarded as a contract. Such a holding could allow employees who are unsatisfied with an administrative decision regarding a benefit—whether it be LTD, health care, vision, dental, group life insurance, accidental death, or any other classified employee benefit

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[2] *Studier,* 472 Mich at 645.
[3] Const 1963, art 11, § 5.

that allows for a premium—to sidestep the current administrative procedures established by the Commission and appeal directly to the Court of Claims simply by labeling their benefit as a "contract." Not only would this effectively dismantle the Commission's administrative procedures but it is also direct infringement on the constitutional authority of the Commission over the classified civil service. Moreover, the potential filing of hundreds of original contract actions in the Court of Claims would effectively overwhelm an already busy court system. Additionally, Michigan taxpayers would be called upon to bear the substantial financial burden associated with numerous contract claims that would have been more effectively and expediently handled through the administrative procedures established by the Commission and subsequently reviewed in the Circuit Court.

Michigan requests this Court to peremptorily reverse the Court of Appeals' July 14, 2005 decision. In the alternative, Michigan requests this Court to grant this Application for Leave to Appeal.

STATEMENT OF PROCEEDINGS AND FACTS

Procedural Facts

On June 7, 2004, Ms. Kroon-Harris filed a lawsuit against the State of Michigan in the Court of Claims, not the Circuit Court. (Docket Entry No. 1, Complaint.) Ms. Kroon-Harris alleged that "Defendant's refusal to pay disability benefits to Plaintiff is contrary to and a breach of its contract of insurance and the stated provisions of the Plan." (Docket Entry No. 6, First Amended Complaint, ¶ 6.) Michigan filed a motion for summary disposition pursuant to MCR 2.116(C)(4) and (C)(8), arguing that the Court of Claims lacked jurisdiction over the appeal from an administrative agency decision and therefore Ms. Kroon-Harris failed to state a claim. (Docket Entry No. 4, Def's Motion for Summary Disposition).

On February 16, 2005, Court of Claims Judge Joyce A. Draganchuk granted Michigan's motions pursuant to MCR 2.116(C)(4) and (C)(8). (Docket Entry No. 30, Order of Dismissal, ¶ 2). The Court held that the Court of Claims lacked subject matter jurisdiction and that the breach of contract claim could not survive as a matter of law. (Circuit Court transcripts, p 11.) The Court specifically held that Ms. Kroon-Harris's filing of her action as a breach of contract claim in the Court of Appeals "creates an end-run-around for the proper scope of review and the review process," and that there was "no legal support for the claim that long-term disability benefits are contractual." (Circuit Court transcripts, p 9, ¶ 1; p 10, ¶ 1.) She further held that "appeal to the Circuit Court under the revised Judicature Act is the proper course for this kind of action to take." (Circuit Court transcripts, p 9, ¶ 3; p 11, ¶ 1.)

Ms. Kroon-Harris appealed the Court of Claims decision to the Michigan Court of Appeals. (Plaintiff-Appellant's Claim of Appeal). On July 14, 2005, the Court of Appeals reversed the Court of Claims decision and remanded the case, issuing a published decision

holding that jurisdiction was proper in the Court of Claims because Plaintiff's LTD benefit was a contract for which she gave consideration in the form of premium payments.[4]

Michigan filed a Motion for Reconsideration, urging the Court of Appeals to consider this Court's recent analysis in *Studier v Michigan Public School Employees' Retirement Systems* regarding whether a statute created a contract within the public employment context. Michigan also provided the Court of Appeals with the transcripts from the Ingham County Circuit Court, since Ms. Kroon-Harris had not provided the trial court transcripts with her appeal and the Court of Appeals specifically noted in its Opinion that it had not considered the Circuit Court's Opinion. Finally, Michigan asked the Court of Appeals to consider the long-term effects of its decision, and to reconsider the Michigan Constitution's grant of plenary authority to the Michigan Civil Service Commission to set the terms and conditions of employment, including all aspects of a public employee's compensation package. The Court of Appeals denied Defendant's motion without discussion of *Studier* or the Circuit Court's analysis.

Substantive Facts

State employees in the classified service may choose to participate in the long-term disability plan as part of the compensation offered by the Commission.[5] The LTD plan is self-funded in that State funds are used to pay any claim. The plan is authorized by the Michigan Civil Service Commission, pursuant to Const 1963, art 11, § 5, which provides that the Commission shall "fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, . . . make rules and regulations covering all personnel

[4] *Kroon-Harris v State*, No 261146, slip opinion at p 5, ¶ 1 (July 14, 2005).
[5] Civil Service Rule 5-11.1(a)(6). See also, "Long-Term Disability and Income Protection Plan for State of Michigan Employees," October 1, 2002 booklet.

transactions, and regulate all conditions of employment in the classified service."[6] The Commission has adopted rules governing group health plans under Chapter 5 of its Civil Service Rules, entitled Compensation."[7] The Michigan's LTD plan is implemented under the Commission's authority by the Office of State Employer ("OSE"). The OSE arranges for Michigan to contract with a third-party administrator—first Aetna, Core, Broadspire, and now Citizens Management Inc.—to assist with the administration of the plan.

While Ms. Kroon-Harris was enrolled in the State's LTD plan, she became disabled on or before May 11, 2001, and received benefits under the LTD plan until May 12, 2003. Aetna then advised her that after May 12, 2003, she must provide objective medical evidence that she was unable to perform any reasonable occupation for which she was qualified or could become qualified as a result of her education, training, or experience. Ms. Kroon-Harris allegedly provided clinical facts, and the third-party administrator Michigan's LTD program at that time, Core, Inc., denied payment based upon a review of the facts from her medical care providers. Subsequently, Core's physician reviewed her appeal and also denied benefits. Ms. Kroon-Harris then appealed Core's decision to the State's Director of Employee Health Management (EHM), Kenneth Swisher. Mr. Swisher denied her appeal, citing medical documentation from her medical care providers. Finally, Ms. Kroon-Harris appealed Mr. Swisher's decision to the Director of OSE, David Fink. Mr. Fink issued his "final decision," concurring with the previous decisions that she was no longer disabled, and denied her appeal.[8]

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[6] Const 1963, art 11, § 5.
[7] Civil Service Rules, Ch. 5 "Compensation."
[8] Docket Entry No. 6, First Amended Complaint, ¶¶ 1-2.

ARGUMENT

I. Based on this Court's analysis in *Studier v Michigan Public School Retirement Board*, there is a presumption against finding a contract absent a clearly-expressed intention to create a contractual obligation. Here, the Michigan Civil Service Commission exercised its constitutional authority when it fixed the classified civil service employees' rates of compensation to include a long-term disability plan in which Plaintiff chose to participate. The plain language of the Constitution does not state that the Commission contractually binds Michigan with employees in setting the "rate of compensation" and the terms and conditions of employment for classified State employees. The LTD plan is part of a classified State employee's compensation package and does not indicate that Michigan intends to be contractually bound. Therefore, the LTD plan is not a contract with classified civil service employees who choose to participate.

A. Standard of Review

This Court reviews *de novo* a trial court's decision regarding a motion for summary disposition.[9] Jurisdictional questions are questions of law that are reviewed *de novo*.[10]

B. There is a presumption against finding that a statute creates a contract unless the Legislature has unambiguously expressed an intention to create a contractual obligation. Applying this analysis to constitutional provisions, the plain language of the constitutional provision should clearly indicate the intent to create a contract.

This Court, in *Studier*, held that unless there is an adequate expression of intent of the State to bind itself, "courts should not construe laws declaring a scheme of public regulation as also creating private contracts to which the state is a party."[11] In *Studier*, plaintiff argued that a statute establishing health care benefits that were paid to public school retirees, created a contract and could not be changed without unconstitutionally impairing the contract.[12] The Court of Appeals agreed with the plaintiff that the statute created a contractual right to receive health care

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[9] *Taxpayers of Michigan Against Casinos v Michigan*, 471 Mich 306, 317; 685 NW2d 221 (2004).
[10] *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001).
[11] *Studier,* 472 Mich at 662.
[12] *Studier*, 472 Mich at 645.

benefits.[13] The Supreme Court disagreed, saying that no contract for health care benefits was created.[14]

This Court began its analysis in *Studier* by noting the United States Supreme Court's "strong presumption that statutes do not create contractual rights."[15] For decades, the U.S. Supreme Court has maintained that "absent some clear indication that the legislature intends to bind itself contractually, the presumption is that 'a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.'"[16] The U.S. Supreme Court has further stated that the party asserting the creation of a contract must overcome this well-founded presumption, and that courts must proceed cautiously "both in identifying a contract within the language of a regulatory statute and in defining the contours of any contractual obligation."[17]

In *Studier,* this Court first examined the statutory language of MCL 38.1391(1) to see if it was "'plain and susceptible of no other reasonable construction.'"[18] The Court held that plaintiff had not overcome the strong presumption against a contractual agreement where the Legislature had not provided for a written contract on behalf of the State of Michigan, or even used terms typically associated with contractual relationships.[19] Instead, this Court found that the statute's

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[13] *Studier*, 472 Mich at 660.
[14] *Studier*, 472 Mich at 659
[15] *Studier*, 472 Mich at 661 (citing *Nat'l R Passenger Corp v Atchison, Topeka & Santa Fe R Co*, 470 US 451, 465-466; 105 S Ct 1441; 84 L Ed 2d 432 (1985)).
[16] *Studier*, 472 Mich at 661 (*quoting Nat'l R*, 470 US at 465-66) (quoting *Dodge v Board of Education*, 302 US 74, 79 (1937)).
[17] *Studier,* 472 Mich at 662 (quoting *Nat'l R*, 470 US at 465-466) (citing *Dodge*, 302 US at 79).
[18] *Studier*, 472 Mich at 662 (quoting *In re Certified Question* (*Fun 'N Sun RV, Inc v Michigan*), 447 Mich 765, 777-778; 527 NW2d 468 (1994)).
[19] *Studier*, 472 Mich at 663. See also statutes that use specific contract language, for example: Section 34 of the State Housing Development Authority Act, 1966 PA 346, MCL 125.1434 ("The State pledges and agrees with holders of notes and bonds issued by the Authority that the State will not limit or alter the rights vested in the authority to fulfill the terms of any agreements

plain language showed "a policy decision by the Legislature that the retirement system pay 'the entire monthly premium or membership or subscription fee' for the listed health care benefits on behalf of a retired public school employee who chooses to participate in whatever plan the board and the Department of Management and Budget authorize."[20]

This Court's analysis in *Studier* is applicable to this case because Ms. Kroon-Harris's LTD plan was established not just by statute but by the provision of the Michigan Constitution that gave the Commission the power to make rules and regulations concerning all conditions of employment. As in *Studier*, there should be a presumption against finding a contract unless the applicable constitutional provision granting the Commission its powers, or the Commission in exercising those powers, clearly expresses the intention to create a contractual obligation. Here, the constitutional provision that grants the Commission its authority to establish an LTD plan does not manifest an intent that Michigan be contractually bound to employees for any particular benefit of State employment. Nor does the rule promulgated by the Commission to provide State employees with group insurance plans as part of their compensation, indicate that Michigan should be contractually bound. Finally, the LTD plan does not indicate that Michigan intended to be contractually bound.

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made with the holders thereof, or in any way impair the rights of the holders . . .); and similar language in the Legislature in the Higher Education Facilities Authorities Act, 1969 PA 295, MCL 390.927, and Michigan Broadband Development Authority Act, 2000 PA 49, MCL 484.3216.

[20] *Studier*, 472 Mich at 664 (quoting MCL 38.1391(1) (emphasis added)).

1. The Michigan Constitution grants the Civil Service Commission the authority to offer long-term disability benefits to a classified civil service employees, and to establish administrative procedures to handle grievances concerning denial of LTD benefits.

The Commission is a constitutionally recognized body. Article 11, § 5 of the Michigan Constitution embodies the broad grant of authority to the Commission: [21]

> The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

This constitutional language is plain, unambiguous, and easily understood. It gives the Commission the exclusive and plenary authority over all terms and conditions of classified civil service employment.[22] The power of the Commission to make rules and regulations is beyond dispute.[23]

The Commission considers long-term disability benefits as compensation for classified employees and, thus, within one of its constitutional duties under Const 1963, art 11, § 5. The Commission includes LTD benefits for eligible employees in the "Compensation" chapter (Chapter 5) of its Civil Service rules.

The Commission also promulgates rules and regulations regarding the administrative procedure to be applied when a decision concerning a group insurance plan, including an LTD benefit, is challenged.[24] OSE's administration of State LTD benefits neither alters the

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[21] Const 1963, art 11, § 5, ¶¶ 4, 6.
[22] *Viculin v Dep't of Civil Serv*, 386 Mich 375, 393; 192 NW2d 449 (1971).
[23] *Viculin*, 386 Mich at 393; *Plec v Liquor Control Comm'n*, 322 Mich 691, 694; 34 NW2d 524 (1948).
[24] Civil Service Rule 5-11.1(e).

constitutional underpinnings of the Commission's plenary authority nor converts Commission-authorized LTD benefits into a contract of insurance.

2. The constitutional provision granting the Commission's authority to establish an LTD plan does not indicate the intent to bind Michigan contractually.

In analyzing the Michigan Constitution's grant of authority to the Commission, the primary rule of construction of the Constitution is the rule of common understanding described by Justice Cooley and quoted with approval by this Court in *Council No. 11 v Civil Service Commission*: "A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it."[25]

For the people to understand that art 11, § 5 mandates a contract between the Commission and classified civil service employees for their compensation or for the terms and conditions of their employment, the provision would have to contain explicit language to that effect. Moreover, for the people to understand that art 11, § 5 allows for the judiciary to circumvent the Commission's exercise of its constitutional authority and its administrative procedures, the provision would have to specifically except such principles from its otherwise broad grant of authority. The rules of common understanding and common sense compel the conclusion that Ms. Kroon-Harris's LTD plan is not a contract.

3. Michigan's LTD plan is a policy, not a contract, because policies, unlike contracts, are inherently subject to revision and/or repeal, and the Commission is free to amend or eliminate the LTD plan.

The U.S. Supreme Court, and this Court in *Studier*, has recognized that policies differ from contracts in that policies are inherently subject to revision and repeal.[26] In the statutory

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[25] *Council No. 11 v Civil Service Comm'n*, 408 Mich 385, 405; 292 NW2d 442 (1980).
[26] *Studier*, 472 Mich at 472 Mich at 662 (citing *Nat'l R*, 470 US at 465-466).

context, the United States Supreme Court explained that "to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of a legislative body.[27] When this Court examined the statute at issue in *Studier*, it noted that the Legislature did not require the board and the department to authorize any particular plan, or explicitly preclude the board and the department from amending whatever plan they authorized.[28]

Similarly here, the Constitution does not dictate the manner in which the Commission must set rates of compensation and the terms and conditions of classified State employment. Rather, the Commission has the discretion to create an employee benefits package and to establish the manner in which benefits grievances are to be handled. The Commission can, at any time, amend or eliminate any part of its comprehensive benefits package,[29] or amend its benefits review procedures. Indeed, the Civil Service rules contemplate that the LTD plan may be changed in the future, since the Commission expects input for future changes to be submitted to its coordinated compensation process for a determination as to whether compensation should be increased or otherwise modified.[30]

Further, the LTD plan booklet clearly indicates that the plan may be amended or discontinued:[31]

> Change or Discontinuance of the Plan
>
> The Employer hopes to be able to continue this plan indefinitely, but, as is customary in group insurance plans, it reserves the right to modify or discontinue

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[27] *Nat'l RR*, 470 US at 466.
[28] *Studier*, 472 Mich at 664.
[29] Const 1963, art 11, § 5; art 4, § 48.
[30] Civil Service Rules 5-11.1(b); 5-1.3.
[31] "Long Term Disability and Income Protection Plan for State of Michigan Employees," October 1, 2002 booklet, State of Michigan self-funded Long Term Disability Plan, General Information, "Change or Discontinuance of the Plan."

the Plan. The State's LTD TPA [third-party administrator] also reserves the right to discontinue the Plan.

You will be notified of any changes in benefits or contributions. Should the plan be terminated, of course, all coverage will automatically cease but this will not affect any claim for disability benefits based upon a disability which commenced while the Plan was in force.

When Ms. Kroon-Harris accepted her position with the classified service, she knew that the Commission could, and would, amend its rules and regulations.[32] When she chose to participate in the LTD plan, she knew that the OSE could unilaterally discontinue the plan. Thus, she had no legitimate expectation that the LTD plan would remain in force, and no vested right existed to compel the LTD plan to remain in force for her benefit.[33] Nor could she have any such expectation since the LTD plan language simply fails to evidence any intent that Michigan be contractually bound.

To characterize the LTD benefit and the specific plan language as a contract would therefore drastically limit the essential and plenary power of the Commission to establish, amend or abolish the plan and its review procedures. The constitutional grant of authority to the Commission, the Commission's decision to offer an LTD plan, and the OSE's implementation of that plan, are mere declarations of policies to be pursued.

4. The payment of a premium does not convert a classified employee's benefit into a contract

Ms. Kroon-Harris managed to convince the Court of Appeals that by merely electing the LTD plan and paying a portion of the premium toward it—a payment that does not even begin to cover the cost of the plan—she has a contract of insurance with Michigan. This Court rejected similar analysis by the Court of Appeals in *Studier* that characterized an employee's benefit package as an element of consideration that the State contracts to tender in exchange for services

[32] Civil Service Rule 1-1.
[33] *Dudkin v Civil Service Comm'n*, 127 Mich App 397, 407-408; 339 NW2d 190 (1983).

rendered by the employee.[34] This Court disagreed, recognizing that, while it is possible for a public employee to become contractually entitled to "compensation" by first performing services, there must be language that explicitly provides for a contractual obligation. The plaintiffs in *Studier* failed to persuade this Court that they had entered into a contract with the State's retirement system,[35] even though they paid a portion of their health care plan in the form of copays and deductibles.

Likewise, Ms. Kroon-Harris's monetary contribution to her LTD plan does not automatically convert a civil service employee benefit into a contract.

5. Michigan's LTD plan is not a contract because it does not meet the traditional elements of a contract.

To constitute a contract, an employee benefit must meet the elements of a traditional contract—legal consideration, mutuality of agreement, and mutuality of obligation.[36] "[W]here mutual assent does not exist, a contract does not exist."[37] As this Court has noted, "one cannot blithely assume that any benefit once conferred is a contract."[38]

Here, no meeting of the minds occurred because the Commission did not intend that specific employee benefits establish a contract, nor did it indicate to Ms. Kroon-Harris that her decision to elect the State's LTD plan would create a contract between her and Michigan.

C. Case law demonstrates the underlying principle that civil service employment differs from employment in the private sector, and that State employees do not have express or implied contacts with Michigan.

Defendant argued below that "classified employees do not have contracts governing the terms of their employment that are either express or implied." Cases such as *Matulewicz v*

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[34] *Studier*, 472 Mich at 668. See also, *Studier v Michigan Pub Sch Employees' Retirement Bd*, 260 Mich App 460, 476; 679 NW2d 88 (2004), overruled by *Studier*, 472 Mich at 642.
[35] *Studier*, 472 Mich at 666.
[36] *Detroit Trust Co v Struggles*, 289 Mich 595, 599; 286 NW844 (1239).
[37] *Quality Products v Nagel Precision*, 469 Mich 362, 372; 666 NW2d 251 (2003).
[38] *Studier*, 472 Mich at 670.

Governor,[39] *Engquist v Livingston County*,[40] and *Dyer v Department of State Police*[41] support this argument.

The Court of Appeals disagreed, stating that these cases did not support the "sweeping" statement that classified employees do not have contracts governing the terms and conditions of their employment. The court erroneously distinguished classified State employee policies or practices from an LTD benefit for which a classified employee makes a monetary contribution.

The distinction between an employment policy or practice and a benefit for which a state employee makes a contribution does not make this line of cases inapplicable to the instant one. To the contrary, these cases are applicable because they all recognize one very crucial point: the nature of classified civil service employment is different than employment with a private entity. In the private sector, when the employer makes an offer and the employee accepts, the employee has a contractual right to those promises expressly or impliedly made. In contrast, when Michigan offers a prospective employee a position and the employee accepts, the State employee does not have contractual rights to their comprehensive compensation benefits any more than they have contractual rights to employee policies and practices.[42]

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[39] *Matulewicz v Governor*, 174 Mich App 295, 304; 435 NW2d 785 (1989) (affirming the circuit court's dismissal of a breach of contract claim and holding that employees did not have a contract right to continuing employment as hearing referees because civil servants do not have contracts of employment).

[40] *Engquist v Livinston County*, 139 Mich App 280, 284; 361 NW2d 794 (1984) (dismissing a breach of contract claim and acknowledging that the public employees did not have a contract to award step increases in compensation, even though such step increases occurred for the last fourteen years.

[41] *Dyer v Dep't of State Police*, 1996 Mich App 121; 326 NW2d 447 (1982) (rejecting plaintiffs' contract claim that department policy and practice had given rise to a contractual right to non-duty use of state vehicles).

[42] *Matulewicz*, 174 Mich App at 304.

1. Ms. Kroon-Harris's LTD plan is open only to classified state employees.

Ms. Kroon-Harris has access to her LTD benefit only by virtue of her status as a classified State employee. Those who are not classified civil service employees are simply ineligible for the LTD benefit offered to Ms. Kroon-Harris, regardless of their ability and willingness to pay a premium. This differs from other insurance policies that are open to all those who meet various requirements and pay the designated premiums. Further, the amount of a classified employee's monetary contribution to her LTD benefit is integrally tied to the duration of her classified State employment.[43] Her contribution is based on her accumulated hours of sick leave; once she reaches a specified number of hours of accumulated sick leave, her contribution is reduced or eliminated.[44] Accordingly, since Ms. Kroon-Harris's LTD benefit arises out of her State employment, she not entitled to pursue a contract claim against the State.

2. *Guiles v Regents of the University of Michigan* and *LTD Dividend Housing Association v State Housing Development Authority* do not support the Michigan Court of Appeals' holding that a classified employee's LTD benefit is a contract.

The Court of Appeals erroneously relied on *Guiles v Regents of the University of Michigan*[45] to support its holding that denial of LTD benefits is properly reviewed in the Court of Claims.[46] The Court noted that the plaintiff in *Guiles*, a University of Michigan employee, filed her lawsuit in the Court of Claims and the Court of Appeals did not indicate that the Court of Claims lacked subject matter jurisdiction.[47]

Guiles does not support Ms. Kroon-Harris's claim that her LTD benefit is a contract subject to review in the Court of Claims. First, as the Court of Appeals in *Kroon-Harris*

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[43] Civil Service Rule 5-11.3.
[44] Long Term Disability and Income Protection Plan Booklet.
[45] *Guiles v Regents of the Univ of Michigan*, 193 Mich App 39; 483 NW2d 673 (1992).
[46] *Kroon-Harris*, No. 261146, slip opinion at 5-6.
[47] *Kroon-Harris*, No. 261146, slip opinion at 5-6.

recognized, subject-matter jurisdiction was not at issue in *Guiles*[48] and, therefore, the Court did not analyze whether the LTD benefit was a contract. Second, in *Guiles* there was no administrative agency or procedure to review the denial of claims, whereas, here, the OSE is a State administrative agency and its decisions are subject to review in accordance with the Michigan Constitution and pursuant to OSE's policies implemented under the Commission's authority.

The Court of Appeals in *Kroon-Harris* also erroneously relied on *Parkwood LTD Dividend Housing Association v State Housing Development Authority.*[49] *Parkwood* is not analogous to the instant case. The limited dividend housing association in *Guiles* was a developer who received a low-interest loan from the housing authority in exchange for agreeing to abide by certain restrictions.[50] By statute, a limited dividend housing association is "organized *exclusively* to provide" low income housing and facilities;[51] it is supervised and regulated by the housing authority for that purpose only,[52] and dissolves when it satisfies its mortgage obligation.[53] The association was not an employee of the State and had no ongoing relationship with the State housing authority outside the terms of the mortgage. The mortgage neither arose out of, nor was dependant on, the fulfillment of any other terms or obligations.

The outside developer's relationship to the State cannot, therefore, be compared to that of Ms. Kroon-Harris, a classified State employee. Nor can the State's offer of a mortgage to an outside developer be compared to Ms. Kroon-Harris's opportunity to contribute to a LTD plan

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[48] *Kroon-Harris*, No. 261146, slip opinion at 6.
[49] *Parkwood LTD Dividend Housing Assoc v State Housing Develop Auth*, 468 Mich 763; 664 NW2d 185 (2003).
[50] *Tradewinds East Assoc v Hampton Charter Twp*, 159 Mich App 77, 80; 406 NW2d 845 (1987).
[51] § 125.1493(a) (emphasis added).
[52] § 125.1493(c).
[53] *Parkwood*, 258 Mich App at 766 n1.

that was part of her overall classified State employee compensation package. Ms. Kroon-Harris's payment of a portion of the premium toward her LTD benefit in the context of a classified State employee compensation package differs drastically from that the relationship of an outside entity who contracts with the State for services rendered.

In sum, Michigan urges this Court to heed the United States Supreme Court's admonition to proceed cautiously[54] in its analysis of whether a classified employee benefit constitutes a contract. Judicial skepticism should be particularly acute where civil service employee benefits are at issue and the intent to create a contract could easily have been, but was not expressed by the drafters of either the Constitution or the LTD plan.

Michigan also urges this Court to apply its sound reasoning in *Studier* to the facts of this case, and to decline to find a contract where none exists. Neither the constitutional language giving the Commission its authority, nor the Civil Service Rules authorizing the LTD plan as compensation for State employees in the classified service, nor the LTD plan language approved by the Commission and implemented by the Office of the State Employer, specifically express any intention that Michigan contract with Ms. Kroon-Harris for LTD benefits. Therefore, like the plaintiffs in *Studier*, Ms. Kroon-Harris has failed to overcome the strong presumption against finding the creation of a contract. This conclusion is bolstered by the ample body of case law demonstrating that classified State employees do not have employment contracts with Michigan.

Finally, Michigan urges this Court to recognize the significant and detrimental long-term effects of characterizing compensation benefits for classified employees as contracts. First, it would impermissibly limit the constitutional authority of the Commission to fix the rates of compensation and establish administrative review procedures. Second, it would dismantle the

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[54] *Studier,* 472 Mich at 662 (quoting *Nat'l RR*, 470 US at 465-466) (citing *Dodge*, 302 US at 79).

Commission's administrative review procedures already in place. Third, it would increase original contract actions in the Court of Claims, overwhelming a busy court system and imposing a significant financial burden on the State.

II. The Michigan Constitution recognizes the plenary authority of the Commission to set compensation rates and establish procedures for settling classified civil service employment disputes. Here, the Court of Appeals held that an LTD benefit is a contract and granted the Court of Claims jurisdiction to resolve a dispute over classified civil service compensation benefits. The Court of Appeals' holding impermissibly interferes with the constitutional authority granted to the Michigan Civil Service Commission and thus violates the Separation of Powers Doctrine under Const 1963, art 3, § 2.

A. Standard of Review

Michigan adopts and incorporates the same standard of review reflected in Argument I.

B. The separation of powers doctrine precludes judicial, legislative, or executive incursion into the Commission's constitutional sphere of authority. The Court of Appeals violated this doctrine by holding that a benefit plan for State employees of the classified service is a contract, and, thus, subject to the jurisdiction of the Court of Claims

The Court of Appeals, by declaring the LTD plan a contract, improperly established a term or condition of employment of the classified service within the exclusive jurisdiction of the Commission. By stating that the Court of Claims has jurisdiction over the LTD plan dispute, the Court of Appeals has impermissibly allowed the Legislature to create a grievance procedure contrary to the separation of powers doctrine.

This Court has consistently recognized the constitutional authority of the Commission over State employees in the classified service.[55] More specifically, this Court stated, "'[w]e do not question the commission's authority to regulate employment-related activity involving

[55] *Welfare Employees Union v Civil Serv Comm'n*, 28 Mich App 343, 351; 184 NW2d 247 (1970); *Nummer v Treasury Dep't*, 448 Mich 534, 556; 533 NW2d 250 (1995) (stating that the Civil Service Commission "is the constitutionally created agency to deal with all facets of state employment); *Reed v Civil Service Comm'n*, 301 Mich 137, 158; NW2d 41 (1942) (recognizing the Commission's constitutional "supremacy" with respect to State employees in the classified civil service); *Civil Service Comm'n v Auditor General*, 302 Mich 673, 685; 5 NW2d 536 (1942).

interim matters such as job specifications, compensation, grievance procedures, discipline, collective bargaining, and job performance . . . ."[56] Once the constitution has granted specific authority to one branch of government, even the Legislature cannot subsequently take it away.[57]

The Commission's authority over all conditions of employment is complemented by Article 4, § 48 of the Michigan Constitution, providing that the legislature may not enact laws for the resolution of disputes concerning public employees in the State classified civil service.[58] The Address to the People accompanying this section provides:[59]

> This is a revision of Sec. 7, Article XVI, of the present [1908] constitution to make it clear that the legislature has power to establish procedures for settling disputes in public employment. The section does not specify what the procedure shall be, but leaves that decision to future legislatures. The state classified civil service is exempted because the constitution has specific provisions in this area.

Thus, the Constitution does not allow the Legislature to enact any laws for the resolution of disputes concerning State employees in the classified civil service, since the Commission has exclusive jurisdiction over this arena.[60]

With due respect to this authority, this Court has held that "any executive, legislative or judicial attempt at incursion into [the Commission's] sphere would be unavailing."[61] This holding stems from the separation of powers doctrine embodied in the Constitution[62]:

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[56] *Council No. 11, AFSCME v Civil Service Comm'n* , 408 Mich 385, 406; 292 NW2d 442 (1980).
[57] *House Speaker v Governor*, 443 Mich 560, 592; 506 NW2d 190 (1993) (citing *Council No. 11,* 408 Mich at 452.).
[58] Const 1963, art 4, § 48.
[59] *Bd of Control of Eastern Michigan Univ v Labor Mediation Bd*, 384 Mich 561, 566; 184 NW2d 921 (1971) (citing Official Record, Constitutional Convention of 1961, Vol II, p 3377)).
[60] Const 1963, art 4, § 48; *Bd of Control of Eastern Michigan Univ v Labor Mediation Bd*, 384 Mich 561, 566; 184 NW2d 921 (1971) (citing Official Record, Constitutional Convention of 1961, Vol II, p 3377).
[61] *Council No. 11*, 408 Mich at 452. See also, *Viculin*, 386 Mich at 393 (the Legislature cannot regulate the internal procedures of the Civil Service Commission).
[62] Const 1963, art 3, § 2.

> No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.

The powers of government were divided among three branches of government to preserve their independence.[63] The Commission's functions are not set out in the article of the Constitution dealing with the executive branch, but rather, in the article dealing with public officers and employment. While this Court has concluded that the logical repository for the Commission's function was within the executive branch,[64] the Commission itself is not subject to control or regulation by the executive, legislative, or judicial branch of our State government.[65]

As asserted in Argument I above, the Court of Appeals erroneously decided that Kroon-Harris's LTD plan is a contract. After declaring the LTD plan a contract, the Court of Appeals employed the Court of Claims Act promulgated by the Legislature as another means for parties to resolve their disputes against the State.[66] But the use of the Court of Claims Act to resolve a dispute concerning an employment benefit by a State employee in the classified civil service would contravene Const 1963, art 4, § 48, and thus the separation of powers doctrine.

This Court reversed a circuit court decision for infringing on the sole authority of a county civil service commission where the court ignored the plain language of a statute as interpreted by a commission and fixed salary levels as the court deemed more appropriate[67]:

> We must not usurp the functions of an administrative body. This the Constitution of the State forbids . . . . The determination of facts and the propriety of action of administrative boards is not a judicial function . . . . In the instant the circuit judge sought by hearing de novo to substitute his judgment for that of the civil service commission in the discharge of one of its administrative functions. IN attempting to do so he acted without jurisdiction. The courts cannot supplant or function as civil service commissions . . . . If there are any inequities in the act,

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[63] *In re 1976 PA 267*, 400 Mich 660, 662; 255 NW2d 635 (1977).
[64] *Reed*, 301 Mich at 152; *Straus v Governor*, 459 Mich 526, 537; 592 NW2d 53 (1999).
[65] *Reed*, 301 Mich at 163.
[66] *Kroon-Harris*, No. 261146, slip opinion at 7.
[67] *Bartkowiak v Wayne County*, 341 Mich 333, 343; 67 NW2d 96 (1954).

> they can only be remedied by the legislature . . . . While it is within the province of courts to pass upon the validity of statutes and ordinances, courts may not legislate nor undertake to compel legislative bodies to do so one way or another.

When judgments of bodies created by statute receive such deference, the constitutional authority of the Commission demands equal, if not greater, respect.

In sum, the Court of Appeals' holding that Ms. Kroon-Harris's LTD plan constitutes a contract for insurance and that she can appeal a termination of benefits directly to the Court of Claims, potentially for a *de novo* review, should not be allowed to stand because it infringes on the constitutional authority of the Commission and dismantles the administrative review process established by the Commission. In effect, the Court of Appeals in a published decision has erroneously told the Court of Claims that it must now substitute its judgment for that of the Commission or the Commission's designee, the OSE. The Court of Appeals, however, lacks the power to usurp the Commission's constitutional and statutory authority in this manner.

III. The Revised Judicature Act, MCL 600.631, provides that appeals from agencies authorized to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, must be brought in the Circuit Court. The Office of State Employer is created by Executive Order of the Governor and is authorized to formulate policies. Therefore, it is an agency authorized under the laws of this State to promulgate rules and Plaintiff's claim should have been brought in the Circuit Court under the Revised Judicature Act.

A. Standard of Review

Michigan adopts the same standard of review reflected in Argument I.

B. An appeal from an agency authorized under the laws of Michigan to promulgate rules must be made to the Circuit Court.

This Court in *Preserve the Dunes, Inc.* set forth the following statutory schemes for judicial review of an administrative decision: (1) the review process prescribed in the statute applicable to the particular agency; (2) an appeal to the circuit court pursuant to the Revised

Judicature Act (RJA), MCL 600.631, and MCR 7.104(A), 7.101 , and 7.103; or (3) the review provided in the Administrative Procedures Act (APA), MCL 24.201 *et seq.*[68]

Under the options provided in *Preserve the Dunes, Inc*, there is no "statute applicable to the particular agency," so the first review option is not appropriate. Similarly, the third review option articulated in *Preserve the Dunes, Inc.* is inapplicable because the APA applies to "contested cases." MCL 24.203(3) defines a "contested case" as:[69]

> . . . a proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing . . . . .

Here, Ms. Kroon-Harris seeks judicial review of the OSE's review and denial of her long-term disability benefits. OSE conducted the review and made a final decision without an evidentiary hearing. Indeed, there is no requirement that OSE conduct an evidentiary hearing.[70] Where a final determination is made without an evidentiary hearing, the APA is inapplicable.[71]

Additionally, OSE is not an "agency" as that term is defined under the APA. MCL 24.203(2) defines "agency" as:[72]

> . . . a state department, bureau, division, section, board, commission, trustee, authority or officer, created by the constitution, statute or agency action. Agency does not include an agency in the legislative or judicial branch of state government, the governor, . . .

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[68] *Preserve the Dunes, Inc v Dep't of Environmental Quality*, 471 Mich 508, 519; 684 NW2d 842 (2004).
[69] MCL 24.203(3).
[70] Not all state agencies make provisions for an evidentiary hearing in all procedural operations. See, e.g., *Kelly Downs, Inc v Racing Comm'n*, 60 Mich App 539, 545; 231 NW2d 443 (1975) (MCLA 431.38(4) governing the grant or denial of an application for a racetrack license, does not require an evidentiary hearing); *13-Southfield Assoc v Dep't of Public Health*, 82 Mich App 678, 684; 267 NW2d 483 (1978) (plaintiff had no statutory right to a hearing on Public Health's "no need" certification requiring that the state agency certify the need for a facility before insurance may be issued).
[71] *BCBSM v Comm'r of Insur*, 155 Mich App 723, 729; 400 NW2d 638 (1986).
[72] MCL 24.203(2).

The OSE, which exists through Executive Orders, is a creature of gubernatorial authority.[73] Because the governor is specifically excluded from the definition of "agency," the OSE is therefore not included in the definition of "agency" for purposes of the APA.

However, the Revised Judicature Act ("RJA")[74] governs this action. MCL 600.631 sets forth the parameters for judicial review of a board or commission's final decision:[75]

> An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in accordance with the rules of the supreme court.

The RJA § 631 is broader than art 6, § 28, both as to entities affected and what may be appealed from;[76] however, "[r]eview of administrative agency decision under RJA § 631 is limited to the review provided by Const 1963, art 6, § 28."[77] Therefore, if there is no evidentiary hearing required, the court's review is limited to determining whether the administrative actions taken were authorized by law.[78] Review under the RJA is not *de novo*. Instead, where no hearing is required, review is limited in scope to "whether such final decisions, findings, rulings and orders are authorized by law."[79]

C. Ms. Kroon-Harris's claim should have been brought in the Circuit Court under the Revised Judicature Act because the OSE is an agency authorized under Michigan laws to promulgate rules.

In this case, Ms. Kroon-Harris appealed the decision of Core, the third-party administrator, to the Director of the EHM, who affirmed the decision of the third-party

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[73] See EO 1979-5, 1981-3, 1988-6.
[74] MCL 600.631, and MCR 7.104(A), 7.101, and 7.103.
[75] MCL 600.631.
[76] *Viculin*, 386 Mich at 395.
[77] *Viculin*, 386 Mich at 392.
[78] *Viculin*, 386 Mich at 392.
[79] *Viculin*, 386 Mich at 392 (quoting Const 1963, art 6, § 28).

administrator. She then appealed that decision to the OSE Director, who issued a final decision regarding Ms. Kroon-Harris's LTD benefits.[80] The Court of Appeals never reached the issue of whether the OSE is an agency authorized by the laws of the State to promulgate rules, because the Court based its holding exclusively on its determination that the LTD benefit was a contract of insurance.

For purposes of the RJA, the OSE is an agency of the State of Michigan authorized under the laws of the State to promulgate rules. The OSE is an agency because it was created by then-Governor William G. Milliken by Executive Order 1979-5 under the authority vested in the governor by the 1963 Michigan Constitution, art 5, § 8. On October 1, 2002, then-Governor John Engler transferred the authority, powers, duties, functions, and responsibilities of the OSE related to the administration of state employee benefit programs to the Department of Civil Service.[81] The Executive Order creating the OSE was authorized by the laws of the State because the Governor must be allowed to exercise his or her constitutional authority to reorganize the executive branch free from interference other than a properly supported legislative veto.[82] The OSE has the power to promulgate rules because the Executive Order states that the OSE shall be headed by a director who "shall formulate, execute and administer labor-management relations policies for classified employees" on behalf of the Employer.[83] Additionally, the avenue of appeal Ms. Kroon-Harris chose—filing in the Court of Claims—is not an appeal provided by law because her LTD plan is not a contract.

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[80] Michigan has since amended the administrative procedure of the OSE to include a final level appeal to the State Personnel Director. Michigan Dep't of Civil Service Regulation 5.18, effective June 19, 2005, 4B2b(b).

[81] Executive Order 2002-13, Governor John Engler, October 1, 2002, Section II, "Transfer." This is referred to as a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965 as amended MCL Section 16.103.

[82] *House Speaker*, 443 Mich at 592.

[83] Executive Order 1979-5, Michigan Governor William G. Milliken.

Accordingly, Ms. Kroon-Harris should have filed her appeal under the RJA in the Circuit Court. Since the OSE was not required to conduct a hearing, the Circuit Court's review would have been limited to determining whether the OSE's final decision was authorized by law.[84] However, as Ms. Kroon-Harris chose to bring her claim in the Court of Claims, the Court of Claims properly denied jurisdiction and dismissed her claim with prejudice.

IV. Appeals from a decision of the Michigan Civil Service Commission must be brought in the Circuit Court. Here, the Office of State Employer's final decision terminating Plaintiff's long-term disability benefits was implemented under the authority of the Commission and dealt with a subject matter within the exclusive jurisdiction of the Commission.

A. Standard of Review

Michigan adopts the standard of review reflected in Argument I.

B. Alternatively, Ms. Kroon-Harris's claim should have been brought in the Circuit Court for limited judicial review under Art. 6, § 28.[85]

Here, the OSE issued a decision terminating the long-term disability benefits received by Ms. Kroon-Harris. The OSE issued the decision pursuant to the Commission's authority to implement and administer the LTD plan it adopted. Ms. Kroon-Harris subsequently filed a complaint with the Court of Claims. But under the Constitution and the Michigan Court Rules, the circuit court should be the court with jurisdiction over this claim.

Any disagreement with the State of Michigan is subject to direct review by the courts[86]:

> All final decisions, finding, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decision, findings, rulings and orders are

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[84] *Viculin*, 386 Mich at 396; *13-Southfield Associates*; *Michigan Waste Systems v Dep't of Natural Resources*, 147 Mich App 729, 736; 383 NW2d 112 (1985), lv den 424 Mich 900 (1986).

[85] Michigan notes that not all appeals under Const 1963 are appeals of right.

[86] Const 1963, art 6, § 38; *Parnis v Dep't of Civil Service*, 79 Mich App 625, 629; 262 NW2d 883 (1977).

authorized by law, and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

This Court provided that an appeal from a decision of the Commission is governed by the procedures established for appeals from decisions of administrative agencies in the Administrative Procedures Act, MCL 24.201.[87] MCR 7.104(C) provides that an appeal from a decision of the Commission is governed by the provisions for appeals from administrative agencies in the Administrative Procedures Act, MCL 24.201.[88] Since the decision issued by the OSE dealt with a matter within the exclusive jurisdiction of the Commission, the Circuit Court, and not the Court of Claims, would be the appropriate court to resolve this dispute under Const 1963, art 6, § 28.

Any due process arguments Ms. Kroon-Harris might have regarding the OSE's implementation of the Commission's authority could have been properly addressed by the Circuit Court. They are not, however, pertinent to the jurisdictional question at issue here.

Ms. Kroon-Harris elected not to bring her LTD benefits claim in the Circuit Court but erroneously chose the Court of Claims. Her complaint should be dismissed because, for the reasons discussed above, the Court of Claims does not have jurisdiction over the claim.

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[87] MCR 7.104(C). See also, *Viculin*, 386 Mich at 396 (appeals from a decision of the Commission shall be filed in the circuit court following the provision for appeals from administrative agencies as provided in the Administrative Procedures Act of 1969, as amended being MCLA § 24.201 *et seq*).

[88] MCR 7.104(C). See also, *Viculin*, 386 Mich at 396 (appeals from a decision of the Commission shall be filed in the circuit court following the provision for appeals from administrative agencies as provided in the Administrative procedures Act of 1969, as amended being MCLA § 24.201 *et seq*).

CONCLUSION

Ms. Kroon-Harris should have brought her claim in the Circuit Court under either the Revised Judicature Act or, alternatively, MCR 7.104(C) and Const 1963, art 6, § 28. The Court of Appeal's decision that Plaintiff Ms. Kroon-Harris's LTD plan is a contract and subject to the jurisdiction of the Court of Claims should be reversed. It not only contravenes well-established case law of this Court, but also impermissibly undermines the Michigan Civil Service Commission's constitutional authority. Moreover, the consequences of the Court of Appeals erroneous decision cannot be overstated. It would effectively dismantle the Commission's administrative policies and procedures for review of denials of employee health care benefits, and would have grievous long-term consequences for both Michigan and the court system.

WHEREFORE, Michigan respectfully requests that this Honorable Court grant defendant Michigan's Application for Leave to Appeal. In the alternative, Michigan requests this Honorable Court to: (1) either issue a peremptory order, pursuant to MCR 7.302(G)(1), reversing the Court of Appeals, or (2) remand the case to the Court of Appeals to reconsider its opinion in light of this Court's decision in *Studier v Michigan Public School Employees' Retirement System.*

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